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ABSTRACT

Title VI was designed to put an end to Federal support of discrimination and to assure blacks the right of access to Federally assisted programs. However, the Federal government has not established sufficiently rigorous compliance and enforcement mechanisms to ensure that its programs do not contribute to racial discrimination. In order to enforce Title VI effectively, agencies must have not only acceptable monitoring and enforcement procedures but a commitment to remedying the effects of past racial discrimination and making sure no one is improperly excluded on the basis of race, color, or national origin. Within the context of urban mass transportation, the principles of Title VI are particularly applicable. Minorities in the cities have suffered the consequences of isolation, increased travel costs, and displacement brought on by the expenditure of billions of Federal dollars on highway construction. As a Federal agency, the Urban Mass Transportation Administration (UMTA) has an important role to play in dealing with the problems of minority groups in America's cities in meeting and going beyond the requirements of Title VI. (Author/EB)

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REMARKS

BY

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BEFORE THE

URBAN MASS TRANSPORTATION ADMINISTRATION
WASHINGTON, D. C.

ON

WEDNESDAY, JUNE 20, 1979

UD019599

IT IS TRULY A PLEASURE TO BE ABLE TO ATTEND A SESSION CONVENED BY AN AGENCY OTHER THAN THE CIVIL RIGHTS DIVISION OF THE JUSTICE DEPARTMENT TO DISCUSS OBTAINING GREATER COMPLIANCE WITH TITLE VI FROM RECIPIENTS OF FEDERAL FUNDING. AS YOU KNOW, THE ATTORNEY GENERAL HAS RESPONSIBILITY FOR TITLE VI COORDINATION PURSUANT TO EXECUTIVE ORDER 11764. GIVEN THE GENERALLY LOW LEVEL OF INTEREST IN TITLE VI ENFORCEMENT AMONG FEDERAL AGENCIES, HOWEVER, WE OVER AT JUSTICE WERE ON THE VERGE OF CONCLUDING THAT WE HAD BEEN RELEGATED TO TALKING TO OURSELVES AS THE ONLY WAY OF DISCHARGING THAT RESPONSIBILITY WHEN GARY GAYTON'S LETTER INVITING ME TO SPEAK TO YOU ARRIVED. I WANT TO TAKE THIS OPPORTUNITY TO COMMEND GARY AND HIS STAFF FOR ACTING SO SOON AFTER TAKING OFFICE AT UMTA TO ADDRESS THIS CRITICAL SUBJECT.

AT THE TIME THAT CONGRESS WAS DEBATING LEGISLATION THAT BECAME THE CIVIL RIGHTS ACT OF 1964, BLACKS OFTEN WERE DENIED THE BENEFITS OF PROGRAMS SUPPORTED WITH FEDERAL FUNDS. TITLE VI WAS DESIGNED TO PUT AN END TO FEDERAL SUPPORT OF DISCRIMINATION AND TO ASSURE TO BLACKS THE RIGHT OF ACCESS TO FEDERALLY ASSISTED PROGRAMS. REPRESENTATIVE EMMANUEL CELLER, THE CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE AND THE PRINCIPAL HOUSE PROPONENT OF TITLE VI, STATEDTHAT:

> IT SEEMS RATHER SHOCKING . . . THAT WHILE WE HAVE ON THE ONE HAND THE FOURTEENTH AMENDMENT, WHICH IS SUPPOSED TO DO AWAY WITH DISCRIMINATION SINCE IT PROVIDES FOR EQUAL PROTECTION OF THE LAWS, ON THE OTHER HAND, WE HAVE THE FEDERAL GOVERNMENT AIDING AND ABETTING THOSE WHO PERSIST IN PRACTICING RACIAL DISCRIMINATION.

IN LIGHT OF THIS HISTORY, I FIND IT "RATHER SHOCKING," TO BORROW REPRESENTATIVE CELLER'S PHRASE, THAT TITLE VI ENFORCEMENT HAS NOT BEGUN TO REACH ADEQUATE LEVELS ALMOST 15 YEARS AFTER ITS ENACTMENT. I HOPE THAT YOU DO, TOO. AT A TIME WHEN AGENCIES SUBJECT TO TITLE VI ARE DISPENSING APPROXIMATELY $125 BILLION ANNUALLY, IT IS MY CONSIDERED JUDGMENT THAT THE FEDERAL GOVERNMENT HAS NOT ESTABLISHED SUFFICIENTLY RIGOROUS COMPLIANCE AND ENFORCEMENT MECHANISMS TO ENSURE THAT ITS PROGRAMS ARE NOT "AIDING AND ABETTING THOSE WHO PERSIST IN PRACTICING RACIAL DISCRIMINATION." AMONG MANY AGENCIES, THERE CONTINUES TO BE CONFUSION OVER THE PURPOSES OF TITLE VI, WOEFULLY LOW STAFFING AND FUNDING LEVELS FOR PRE-AWARD AND PROGRAM MONITORING AND RELUCTANCE TO INITIATE ENFORCEMENT ACTION AGAINST RECIPIENTS REASONABLY

SUSPECTED OF NONCOMPLIANCE. UNDER TITLE VI, ENFORCEMENT CAN OCCUR BY WAY OF ADMINISTRATIVE TERMINATION PROCEEDINGS OR REFERRAL TO THE DEPARTMENT OF JUSTICE FOR LITIGATION. I CAN ASSURE YOU THAT, WITH THE EXCEPTION OF ACTIONS BY HEW TO ACHIEVE SCHOOL DESEGREGATION IN THE LATE 60'S, SUCH ENFORCEMENT EFFORTS HAVE BEEN FEW AND FAR BETWEEN. IN JULY, 1977, PRESIDENT CARTER STATED AS FOLLOWS:

> TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 WRITES INTO LAW A CONCEPT WHICH IS BASIC TO OUR COUNTRY -- THAT THE GOVERNMENT OF ALL THE PEOPLE SHOULD NOT DISCRIMINATE ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN. THERE ARE NO EXCEPTIONS TO THIS RULE; NO MATTER HOW IMPORTANT A PROGRAM, NO MATTER HOW URGENT THE GOALS, THEY DO NOT EXCUSE VIOLATING ANY OF OUR LAWS -- INCLUDING THE LAWS AGAINST DISCRIMINATION.

SUFFICE IT TO SAY THAT MANY AGENCIES HAVE BEEN SLOW TO RESPOND TO THE PRESIDENT'S EXEMPLARY LEADERSHIP IN THIS REGARD. FOR EXAMPLE, LAST YEAR I WAS TOLD BY THE HEAD OF A TITLE VI AGENCY WITH A $2 BILLION BUDGET THAT HE THOUGHT IT WAS UNREASONABLE TO SPEND $500,000 CONDUCTING COMPLIANCE REVIEWS AND FELT THAT THE MONEY COULD BE USED MORE EFFECTIVELY IN ASSISTING THE INTENDED BENEFICIARIES

OF HIS PROGRAMS. OF COURSE, ONE CANNOT KNOW WHETHER THE "INTENDED BENEFICIARIES" ARE BEING REACHED IF NO MONITORING OCCURS.

THE JUSTICE DEPARTMENT HAS POTENT WEAPONS WITH WHICH TO COUNTERACT DISCRIMINATION. BUT IT SEEMS TO ME THAT THE FEDERAL GOVERNMENT ENTERS THE FIGHT FOR EQUAL OPPORTUNITY WITH ONE HAND TIED BEHIND ITS BACK WHEN IT ESCHEWS RECOURSE TO TITLE VI PROCEDURES. OUR LAWSUITS GENERALLY INVOLVE LIMITED FACT PATTERNS, ARE BROUGHT OFTEN AFTER DISCRIMINATION HAS ALREADY OCCURRED AND CAN OBTAIN ONLY SO MUCH RELIEF AFTER THE VIOLATION HAS TAKEN PLACE. ADMINISTRATIVE ENFORCEMENT OF TITLE VI, IN CONTRAST, CAN SWEEP MORE BROADLY. THOUGH IT POSSESSES SOME MEASURE OF COERCION, IT ALSO PERMITS THE FUNDING AGENCY TO ACT AFFIRMATIVELY TO SUPPORT RECIPIENTS DEMONSTRATING FIDELITY TO NONDISCRIMINATION PRINCIPLES. IT CAN BE BOTH THE "CARROT" AND THE "STICK."

IN ORDER TO ENFORCE TITLE VI EFFECTIVELY, AGENCIES MUST HAVE NOT ONLY ACCEPTABLE MONITORING AND ENFORCEMENT PROCEDURES BUT A COMMITMENT TO CERTAIN BASIC PRINCIPLES. FIRST, IT MUST BE RECOGNIZED THAT TITLE VI IMPOSES UPON AN AGENCY THE DUTY TO REMEDY THE EFFECTS OF PAST RACIAL DISCRIMINATION OR EXCLUSION FROM ITS PROGRAMS, AS WELL AS TO ENSURE EVEN-HANDEDNESS WITH RESPECT TO PRESENT PRACTICES. SECOND, EVEN WHERE THERE HAS BEEN NO PAST DISCRIMINATION,

THE AGENCY HAS AN AFFIRMATIVE DUTY TO SEE TO IT THAT NO ONE IS IMPROPERLY EXCLUDED ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN. THE DEPARTMENT OF TRANSPORTATION TITLE VI REGULATIONS ON THIS REGARD, LIKE THOSE OF MOST OTHER FEDERAL AGENCIES, STATE THAT:

> EVEN IN THE ABSENCE OF PRIOR DISCRIMINATORY PRACTICE OR USAGE, A RECIPIENT IN ADMINISTERING A PROGRAM OR ACTIVITY TO WHICH THIS PART APPLIES, IS EXPECTED TO TAKE AFFIRMATIVE ACTION TO ASSURE THAT NO PERSON IS EXCLUDED FROM PARTICIPATION IN OR DENIED THE BENEFITS OF THE PROGRAM OR ACTIVITY ON THE GROUNDS OF RACE, COLOR OR NATIONAL ORIGIN.
>
> 49 C.F.R. 21.5(b)(7).

TITLE VI IS CONCERNED NOT ONLY WITH PRECLUDING INTENTIONALLY DISCRIMINATORY ACTS OR WITH REMEDYING THE EFFECTS OF PAST INTENTIONAL DISCRIMINATION BUT ALSO WITH ENSURING THAT DISCRIMINATORY EFFECTS OF OTHERWISE NEUTRAL PRACTICES ARE CORRECTED. IN OTHER WORDS, THE "PASSIVE VIRTUES" HAVE LITTLE PLACE IN TITLE VI ENFORCEMENT.

I WILL NOT PRETEND BEFORE THIS KNOWLEDGEABLE GROUP TO HAVE ANY EXPERTISE WITH RESPECT TO MASS TRANSPORTATION

ISSUES. I WOULD LIKE, HOWEVER, TO MAKE A FEW OBSERVATIONS WITH RESPECT TO HOW TITLE VI PRINCIPLES MIGHT OPERATE WITHIN THE CONTEXT OF UMTA'S PROGRAMMATIC RESPONSIBILITIES. IT IS CLEAP THAT TITLE VI REQUIRES THAT TRANSPORTATION BE PROVIDED ON A NONDISCRIMINATORY BASIS INSOFAR AS ITS COST, QUALITY AND QUANTITY OF SERVICE ARE CONCERNED. BUT TITLE VI HAS BFEN FOUND TO REQUIRE MORE THAN EVEN-HANDEDNESS IN THE DISTRIBUTION OF GOODS AND SERVICES FINANCED WITH FEDERAL FUNDS.

IN LAU V. NICHOLS, A 1973 DECISION, THE UNITED STATES SUPREME COURT UPHELD HEW'S CONSTRUCTION OF TITLE VI UNDER WHICH, THE COURT NOTED, "(D)ISCRIMINATION IS BARRED WHICH HAS THAT EFFECI EVEN THOUGH NO PURPOSEFUL DESIGN IS PRESENT. . . ." IN LAU THE SAN FRANCISCO SCHOOL SYSTEM FAILED TO PROVIDE ENGLISH LANGUAGE INSTRUCTION TO THE 1,800 NON-ENGLISH SPEAKING STUDENTS OF CHINESE ANCESTRY IN THE SYSTEM, OR TO PROVIDE THEM WITH OTHER ADEQUATE INSTRUCTIONAL PROCEDURES, AND THE COURT HELD THIS TO BE A VIOLATION OF TITLE VI BECAUSE IT PREVENTED THOSE STUDENTS FROM HAVING A MEANINGFUL OPPORTUNITY TO PARTICIPATE IN THE FEDERALLY FUNDED PUBLIC EDUCATION PROGRAM. THE COURT CONCLUDED THAT THE "BENEFITS" OF SAN FRANCISCO'S

FEDERALLY-FUNDED PROGRAM WENT BEYOND THE MERE PROVIDING OF INSTRUCTIONAL MATERIALS. PROVIDING THEM IN A FORM THAT WOULD PERMIT ALL STUDENTS TO MAKE EFFECTIVE USE OF THEM IN TERMS OF INCREASING THEIR KNOWLEDGE WAS ALSO A "BENEFIT" OF THE PROGRAM.

I THINK LAU PROVIDES A USEFUL BENCHMARK AGAINST WHICH TO TEST THE REACH OF TITLE VI IN THE URBAN MASS TRANSPORTATION CONTEXT. FIRST, THE PROGRAMMATIC OBJECTIVES OF UMTA GO BEYOND MERE EQUALITY OF TRANSPORTATION IN TERMS OF COSTS, QUALITY AND QUANTITY OF SERVICES. CONGRESS DECLARED AS ONE OF ITS FINDINGS IN SUPPORT OF THE URBAN MASS TRANSPORTATION ACT OF 1964.

> THAT THE WELFARE AND VITALITY OF URBAN AREAS, THE SATISFACTORY MOVEMENT OF PEOPLE AND GOODS WITHIN SUCH AREAS AND THE EFFECTIVENESS OF HOUSING URBAN RENEWAL, HIGHWAY AND OTHER FEDERALLY AIDED PROGRAMS ARE BEING JEOPARDIZED BY THE DETERIORATION OR INADEQUATE PROVISION OF URBAN TRANSPORTATION FACILITIES AND SERVICES. . . .
>
> 21 U.S.C. SECTION 1601(a)(2)

THE ACT, THEREFORE, ENVISIONS THAT URBAN MASS TRANSPORTATION PLANNING WILL ADDRESS WAYS OF DEALING WITH PROBLEMS IN AMERICAN'S METROPOLITAN CENTERS THAT GO BEYOND PROVIDING ADEQUATF FACILITIES FOR MOVING LARGE NUMBERS OF PEOPLE ABOUT.

THAT OBJECTIVE IS CERTAINLY SHARED BY THIS ADMINISTRATION. IN ANNOUNCING HIS NATIONAL URBAN POLICY ON MARCH 27, 1978, PRESIDENT CARTER STATED THAT IT WAS DESIGNED:

> (T)O MAKE AMERICA'S CITIES BETTER PLACES IN WHICH TO LIVE AND WORK. IT IS A COMPREHENSIVE POLICY AIMED BOTH AT MAKING CITIES MORE HEALTHY AND IMPROVING THE LIVES OF THE PEOPLE WHO LIVE IN THEM.

LET ME SUGGEST THAT THE REQUIREMENTS OF TITLE VI IN THE URBAN MASS TRANSPORTATION CONTEXT CANNOT BE UNDERSTOOD WITHOUT ADDRESSING THE FACT OF "RACE AND PLACE." WHAT I MEAN IS THAT AMERICA IS STILL A SEGREGATED SOCIETY: BLACKS AND OTHER MINORITIES LIVE IN THE CITIES; WHITES LIVE IN THE SUBURBS. THE REASONS FOR THIS SITUATION ARE MANIFOLD. RACIAL AND ECONOMIC DISCRIMINATION IN HOUSING, EMPLOYMENT AND EDUCATION HEAD THE LIST. BUT WE ALSO KNOW THAT MINORITIES IN THE CITIES HAVE BEEN DENIED THE BENEFITS GENERATED BY THE EXPENDITURE OF BILLIONS OF FEDERAL DOLLARS

ON HIGHWAY CONSTRUCTION WHICH HAS PRODUCED THE FOLLOWING CONSEQUENCES:

1. RACIAL AND ECONOMIC POLARIZATION OF METROPOLITAN AREAS RESULTING FROM OUTWARD MIGRATION OF MOBILE WHITE HOUSEHOLDS AND THE INCREASINGLY SEGREGATED CONCENTRATIONS OF MINORITIES IN THE CENTRAL CITIES. A COROLLARY OF THIS CHANGE IS INTENSIFIED SCHOOL SEGREGATION.

2. ISOLATION OF LOW-INCOME MINORITY NEIGHBORHOODS IN THE CENTRAL CITY RESULTING FROM DECENTRALIZING EMPLOYMENT OPPORTUNITIES ACCESSIBLE ONLY BY AUTOMOBILE.

3. REDUCTIONS IN THE MOBILITY OF THE TRANSIT DEPENDENT CAUSED BY AUTO-INDUCED DECLINES IN TRANSIT SYSTEM VIABILITY AND CONSEQUENT REDUCTIONS IN BOTH LEVELS OF SERVICE AND IN THE NUMBER OF EMPLOYMENT-RELATED DESTINATIONS ACCESSIBLE BY TRANSIT.

4. INCREASED TRAVEL COSTS BROUGHT ABOUT BY BOTH INCREASED TRANSIT CHARGES AND THE NEED OF MINORITIES TO TRAVEL FURTHER TO WORK BECAUSE BARRIERS OF DISCRIMINATION AND COST PREVENT ACCESS TO SUBURBAN HOUSING.

5. REDUCTIONS IN THE SUPPLY OF LOW-COST HOUSING AVAILABLE TO ALL LOW-INCOME HOUSEHOLDS IN THE CENTRAL CITY RESULTING FROM DEMOLITION FOR RIGHT-OF-WAY ACQUISITION AND THE FAILURE TO PROVIDE REPLACEMENT HOUSING.

6. DISRUPTION OF MINORITY HOUSEHOLDS AND COMMUNITIES CAUSED BY DISPLACEMENT FOR RIGHT-OF-WAY ACQUISITION IN THE ABSENCE OF ADEQUATE AND APPROPRIATE RELOCATION OF RESOURCES FOR HOUSEHOLDS AND COMMUNITY INSTITUTIONS. WHATEVER THE CAUSES, MINORITIES IN THE CITIES ARE IN A STATE VERY MUCH LIKE THE CHINESE CHILDREN IN LAU IN THAT THE PROVISION OF "EQUAL" URBAN TRANSPORTATION SERVICES MAY NOT RESULT IN THEIR ENJOYING THE REAL BENEFITS OF SUCH SERVICES. THOSE REAL BENEFITS ACCRUE FROM NOT MERELY BEING ABLE TO GO BUT TO GO TO AN INCREASED NUMBER OF "USEFUL DESTINATIONS," THAT IS LOCATIONS OF EMPLOYMENT, EDUCATION, SERVICES, RETAIL FACILITIES AND IMPROVED HOUSING. UNLESS URBAN MASS TRANSPORTATION PLANS,

TO QUOTE THE PRESIDENT'S MARCH 27 STATEMENT ONCE AGAIN, "INCREASE ACCESS TO OPPORTUNITY FOR THOSE DISADVANTAGED BY ECONOMIC CIRCUMSTANCES OR A HISTORY OF DISCRIMINATION" THE ENDS OF TITLE VI WILL NOT BE SERVED. BEING "ALL DRESSED UP WITH NO PLACE TO GO" SHOULD NOT BE THE LOT OF AMERICA'S URBAN MINORITIES.

I THINK WE ARE ALL AWARE THAT THE TASK I HAVE OUTLINED IS NOT EASY. IT IS NOT ONE THAT CAN HE HANDLED REALISTICALLY BY UMTA OR ANY OTHER AGENCY ACTING ALONE. BUT IT IS A TASK

WORTHY OF ALL OUR ENERGY AND INTELLIGENCE, FOR THE FUTURE OF AMERICA LIES LARGELY IN OUR CITIES. UNLESS WE CAN MAKE THEM PLACES WHERE PEOPLE OF ALL RACES CAN LIVE AND PROSPER, I FEAR THAT WE WILL NOT HAVE MUCH TO POINT TO WITH PRIDE IN YEARS TO COME.

AND LET ME SAY A BRIEF WORD ABOUT TWO OTHER CHALLENGES WE FACE WITH RESPECT TO DISCRIMINATION BASED UPON SEX OR HANDICAP IN FEDERALLY-ASSISTED TRANSPORTATION PROGRAMS. FIRST, I AM PLEASED TO NOTE THAT SECTION 314 OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1978 ADDS A NEW SECTION TO THE URBAN MASS TRANSPORTATION ACT OF 1964 PROHIBITING SEX DISCRIMINATION IN PROGRAMS OR ACTIVITIES FUNDED PURSUANT TO THE STATUTE. THE PROVISIONS OF THIS NEW SECTION APPLY TO EMPLOYMENT AND BUSINESS OPPORTUNITIES "AND SHALL BE CONSIDERED TO BE IN ADDITION TO AND NOT IN LIEU OF THE PROVISIONS OF TITLE VI." THIS AMENDMENT FILLS AN UNFORTUNATE GAP IN TITLE VI COVERAGE WITH RESPECT TO THIS FORM OF DISCRIMINATION. ALSO, THE DEPARTMENT OF JUSTICE HAS NOW ASSUMED A GREATER SHARE OF RESPONSIBILITY WITH THE DEPARTMENT OF TRANSPORTATION IN ASSURING ANOTHER VULNERABLE TRANSIT DISADVANTAGED GROUP, THE HANDICAPPED, THE RIGHT TO PHYSICALLY ACCESSIBLE AND USABLE MASS TRANSPORTATION SYSTEMS. THE DEPARTMENT OF JUSTICE HAS A ROLE IN THE ENFORCEMENT OF SECTION 504 OF THE REHABILITATION ACT OF 1973 AND UNDER

THE 1978 AMENDMENTS TO THE ACT, HAS BECOME THE NEWEST FEDERAL GOVERNMENTAL MEMBER OF THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD. AS THE REPRESENTATIVE OF THE DEPARTMENT OF JUSTICE ON THE COMPLIANCE BOARD, I AM COMMITTED TO ENFORCING AND SAFEGUARDING THE RIGHTS OF HANDICAPPED INDIVIDUALS TO ACCESSIBLE TRANSPORTATION.

I KNOW THAT YOU AT UMTA HAVE TAKEN ON THESE CHALLENGES AS WELL. WE IN THE CIVIL RIGHTS DIVISION ARE SIMILARLY COMMITTED AND LOOK FORWARD TO A FRUITFUL COLLABORATION WITH YOU AND OTHER AGENCIES IN THIS CRITICAL ENDEAVOR.